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# EMOTIONAL STATES AND ILLEGAL ACTS<sup>1</sup>

JOHN R. OLIVER<sup>2</sup>

In addressing a society devoted to clinical criminology, it surely will not be amiss to begin my paper with a recent case history, taken from my own practice among delinquents in the courts of Baltimore. It will serve us as a foundation and as an introduction to the subjective theories, as well as to the objective results, that I propose to lay before you.

In August, 1919, in Baltimore, a Russian Pole, Frank Kulak, was arrested on the street, on suspicion of having committed a small, insignificant burglary, evidently not the carefully planned work of an expert thief. He was taken to the station house, making no outward show of resistance or of anger. Here, in front of the desk, he was put through the usual series of questions. He answered slowly, but without apparent excitement. Indeed, he was outwardly, at least, noticeably quiet and repressed. His name was entered on the police blotter, he was assigned to a cell, and the turnkey, a kindly old policeman, stepped to his side in order to search his pockets before locking him up. The turnkey and Kulak, whom he was searching, stood in the midst of a small group of other policemen, in front of the lieutenant's desk, inside the station house. In other words, the prisoner was absolutely surrounded; there was no chance of escape, and even the thought of escape must have been excluded from his mind by the overpowering odds against him. The old turnkey began to search the prisoner's pockets; from a vest-pocket he took two cheap watches, which he laid on the desk. Then, as he turned back to the prisoner, Kulak, without any sign of anger or haste—almost mechanically, as it seemed—put his hand into his hip-pocket, drew out a loaded revolver, and shot twice at the turnkey, who stood directly in front of him. The turnkey fell. But the prisoner did not attempt to escape. In thirty seconds the turnkey was dead. Then everyone "went up in the air." The policemen present, recovering from their stupefied surprise, fell upon Kulak and "beat him up" most thoroughly. He made no effort to defend himself. Finally, what was left of him was tossed into a cell.

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<sup>2</sup>Medical officer to the Supreme Bench of Baltimore, Md.

A few days later, after being transferred to a cell in the jail, he was referred to me for examination. I found him pacing his cell, muttering to himself and repeating a sing-song rhyme of vile abuse about the warden of the jail, who, as he imagined, was the cause of all his troubles, although the warden in reality had treated him with great kindness. It took me a week to gain the man's confidence. Gradually the waves of emotional excitement that had engulfed him calmed down. He became friendly and very grateful for any little kindness. At night he would beseech the guard on the tier to come to his cell door and talk to him; he dreaded to be left alone. If he were left alone at night he would drift back into mumblings and the repetition of his rhymed abuse of the warden. But finally even these symptoms disappeared.

I obtained from him, bit by bit, the following history: He was, so he thought, about thirty-four years old. Of his life in Russian Poland he had little to tell; he had been a member of a large family, which had somehow disintegrated while he was a boy; he had worked on farms; had never had any schooling, and had done a little thieving on a small scale, but without any legal consequences. A perfectly unattached unit of humanity, without ties of any kind, he came to America, with some hard-earned money, ten years ago, in 1909. In America he wandered from place to place, living mostly in empty box cars. He soon began to steal, and was caught. All his thievings have been so unskilled that he has been caught almost at once. Of his ten years in America, he has spent nine in prison—three in a reformatory in Pennsylvania, where they taught him excellent English; three in an Ohio penitentiary, and three more in the Maryland penitentiary. He was never at liberty for more than four months. In June, 1919, he was released from the Ohio penitentiary, and beat his way to Baltimore. I might add that while in prison he had a good record, and was often given positions of trust. In Baltimore he robbed a small house, on the spur of a moment's impulse, finding there several cheap watches the police. Hence his arrest in August, 1919.

He remembers all the details of his arrest; he remembers being taken to the station house, but of the killing of the turnkey he says: "They told me that I shot him. I guess it's so. But I can't make myself any mind picture of shooting him at all." More interesting still, he says that he did not feel the brutal beating which he received at the hands of the infuriated police. "I just sort of woke up in a cell, and I wondered why my face was all swollen and hurt me so."

Physically, the man is a sound specimen. But all his mental reac-

tions are very slow, although they are neither incoherent nor clouded. In such tests as Dr. Healy's Pictorial Completion Test No. 2, he makes only a score of 38. His Coefficient of Intelligence lies between .75 and .81, varying on repeated tests.

This case is only one of fifty and more similar cases that have come under my observation during the past four years of my work in the Baltimore courts. I have gathered together a number of murders, all committed under emotional stress, as well as cases of shoplifting, in all of which the outstanding feature is a more or less complete amnesia for the act itself, combined with a physical insensibility to the ordinary stimuli of everyday life. At first I was rather suspicious when such delinquents described their periods of utter loss of memory during the commission of their illegal act. But as case followed upon case, I began to compare and to classify.

I have found, of late, most interesting parallels in the wartime experiences of returned soldiers. The French literature on emotional states and their results in the field is very interesting. And I have just come across a German book, by one Dr. Birnbaum, published in Wiesbaden in 1918, and entitled "The Psychic Causation of Mental Disturbances."

As yet, it seems to me, we have not, as criminologists, learned the lessons that the war should have taught us, especially as regards those mental states that are the result of intense emotional stress. The killing of a man in war cannot be, emotionally, so very different from the killing of a man under peace conditions. And at the front we had an opportunity to study the actions of men when dominated by these intense emotions, which belong to the everyday life of war, but which are so seldom brought directly before our eyes in time of peace.

I have found, for example, descriptions of outbreaks of sudden rage, without motive and on trivial occasion, among soldiers during a depressing, gruelling retreat. A soldier, after a defeat, after a long forced retreat, and when at the end of his strength, would, on some slight provocation (such as stumbling over a chance stone in the road) break out into a paroxysm of rage, in which he would curse, scream, throw himself on the ground, or even suddenly attack and kill the nearest of his comrades. Then he would fall into a complete condition of exhausted relaxation. And when he came to himself, he would have no recollection of what had passed. Among the French and the German police, the sudden outbreak of blind, senseless rage which often follows an unexpected arrest, is well known and guarded against. The arrest itself, the touch of the policeman's hand on the offender's shoul-

der, often acts like the spark in a powder magazine, and the result is a sudden explosion.

But all this war material has not yet been collected or sifted. I mention it, however, because it will be a perfect mine of wealth for anyone who wishes to study the results of emotional tensions.

Most people, except the psychologists themselves, who have dipped ever so shyly into those aspects of psychology, that treat of the instincts and the emotions, get the impression that the whole matter is too complex, too covered up beneath a mass of scientific terminology—or, as they say, “made too hard” for the average reader to understand. It has always been my contention that these psychological matters can be made easily understandable. Indeed, we must make them easily understandable. Otherwise the average man or woman will still maintain his present attitude of hopeless haziness and his persistent feeling that the psychologists cannot make their subject clear because it is not clear to themselves.

In what I am about to say I shall do my best to be clear. If in my attempt to simplify I sin, here and there, against strict psychologic and psychiatric science, my colleagues among the psychologists and psychiatrists must bear with me. This is not the place in which to begin a detailed psychological exposition of feeling and emotion, or to differentiate between the James-Lange theory on the one side and the theory of other authorities on the other; to determine whether we cry because we are sad, or are sad because we cry. To anyone who seeks a clear statement of such matters, I refer them to a most excellent volume, which has appeared, “Psychological Principles,” by Professor James Ward of the University of Cambridge; or to the *Psychology of Ebbinghaus*; or—for a most careful exposition and bibliography of the subject, to an article, in the seventeenth volume of the *American Journal of Psychology*, by Dr. J. F. Shepard, on “Organic Changes and Feeling.”

Setting aside the theory of Lange and James, one may say that the following statements should cover what most psychologists hold on the subject of feeling and emotion.

Emotion always has an object. It does not arise in the mind simply as the result of another mental state. It is an expression of feeling, and feeling always has some objective ground; that is, some external stimulus. Emotion is the response to this stimulus. This response is a two-fold excitation—first, an excitation that alters our breathing, our circulation, and certain vegetal functions of our bodies; secondly, an excitation that braces or relaxes certain voluntary muscles,

But this is all beside the mark. I set out to talk straight, plain talk; I even said that it was not inherently necessary that psychology should be clothed in language not understandable by the ordinary lay-mind. And yet, here I have drifted into the language of philosophical disputation. It only shows how difficult it is for a psychiatrist to avoid big words; how easy it is for him to drop into the technical language to which he is accustomed, and which means so much to him although it sounds unintelligible to almost everyone else. The doctor does the same thing when he talks about gastroenterostomies, enzymes, and diatheses. So in what a difficult position must I find myself—I, who am, or who try to be, a psychologist and a physician also.

Because of my double burden, therefore, I trust you will pardon my lapse and let me return to an effort to speak more plainly.

How are we to explain what happened in the mind of Frank Kulak, the murderer, whose case I have just described? What was the mental machinery that slipped a cog? And what caused it?

As you know, we divide, merely for clearness sake, our mental machinery into what we call the higher and the lower centers. The higher centers are those parts of the brain, situated in the top parts of the skull, which are spread out like a cap over the "medulla oblongata," that lies at the base of the skull, and underneath the brain-cap of the higher centers. The medulla represents, together with the entire spinal cord, the lower centers. All the non-conscious, non-thinking activities of the body are taken care of by the lower centers: the reflex actions, instinctive acts, etc. But these two centers, lower and higher—brain and cord—are closely connected and interdependent. The higher centers can control, with more or less completeness, the actions of the lower, and the lower centers can, at times, interfere and make themselves and their activities known to the higher ones. For example, the entire breathing process, the oxydation of the air in the lungs, and the whole muscular apparatus of breathing is controlled from a spot in the medulla. Usually we are not conscious of our acts of breathing, but if I tell you to take a long breath, then your higher centers of brain activity immediately take control over the lower ones and by the brain paths of speech and memory you alter your breathing—you change the orders which the "medulla" ordinarily gives to the lungs. Or if you are suddenly brought into a room filled with gas, your breathing becomes labored and painful; you become aware of some breathing difficulty at once, and your higher centers, being informed by the unusual conditions under which the lower ones are acting, impel you to do something to alter the situation—to open the win-

dow or to leave the room. In an understanding of the interplay of these two sets of centers (together with some understanding of the work of the ductless glands, which I will take up later) lies an understanding of Frank Kulak's case and of many cases similar to it.

Remember that I am only trying to give you things in the rough, simplified, reduced to their lowest denominator of understandableness.

Usually there is an even balance or equilibrium between the actions of the lower and the higher centers. And yet, in a way, there is a constant contest between them: between the instinctive reflex actions of the lower and the thinking directive action of the higher. Indeed, Professor Freud says that all human history, as well as the history of every human personality, is the history of the fight between the brain and the spinal cord. However, we are not usually conscious of this. Usually there is an equilibrium between the two: between the ordinary, almost mechanical, control of the body by the spinal cord and the medulla, and the constant thinking control by the brain itself. But we must never forget that the brain is comparatively a recent equipment of the body; the cord and the medulla are aeons older in the long line of evolution. It has been only as a result of a long struggle that the higher brain centers have more and more dominated the lower animal ones. And, of course, the extent of this control of the higher over the lower varies in different individuals, and in the same individual at different times.

Now what does great emotional stress do to this nicely acquired balance? It destroys it—destroys it so utterly that the higher centers lose all control over the body's activities, and the lower centers act autonomously for themselves. They take over the complete control, and where they do so, of course there is no residual memory, because memory is a function of the higher centers which have been out of control for the time being.

It is a far different, and far more difficult, question when we ask, *How* does this happen? I do not wish to go into this too deeply, but I must at least suggest to you what those wonderful investigators called endocrinologists, have discovered during the past twenty years. And yet, wonderful as these discoveries are, something about them has been known for centuries. In the flush of our modern discoveries we often forget that there has been careful observers of human pathology long before we ourselves came upon the scene. Pythagoras, the great Greek scientist, knew something, indeed he knew a great deal about the physiological results of the emotions. I cannot give you the exact reference to his works. And having been at one time of my

life a classical scholar, I dislike to quote when I have not verified my reference. However, Pythagoras says, none the less: "Hate and fear breed a poison in the blood, which, if continued, affects the organs of digestion." Of course they do more than reach the digestive organs. But the interesting part of the sentence is the first part: "Hate and fear breed a poison in the blood." Pythagoras did not know whence or how the poison came; but he knew that it was *in the blood*, and that it was produced by *the emotion of fear*. We ourselves do not know really so very much more than he did. You may or you may not have heard much about the ductless glands. There are certain glands scattered through the body (of which the thyroid gland in the neck may be taken as an example), which are not like other glands, such as those that swell up in your neck or armpits, or like the parotid, the "mumps" gland. For these latter all have ducts or outlets, through which they pour what they produce into the mechanism that requires this product. So the salivary glands, beneath the tongue, end in a duct through which the saliva flows. But endocrine glands have no such duct or outlet channel. They are connected directly with the blood stream, or with the other liquids of the body, and they pour what they produce directly into the blood. And their products are the great chemical reagents of the body. For instance, it is the ovaries and their products which pour into the blood, at adolescence, those chemical forces which cause the girl to blossom into the mature woman. Now it has been discovered that these ductless glands work in other seemingly mysterious ways. There is a little ductless gland, just above the kidneys, called the suprarenal gland, that is a powerhouse in itself. Its secretion raises the blood pressure, as well as doing many other things. I speak of this gland especially because it seems to be intimately connected with the primal emotion that we call fear—the oldest, the most deeply seated of all our inherited instincts. I am not enough of an endocrinologist to know the exact mechanism of its action. But I do know that when a man is a prey to actual fear, the suprarenal gland becomes active. The blood pressure rises. And those other acute symptoms of fear that are so typical may be produced by it also.

I have made this long discourse because I want you to understand that the mechanism of emotional stress is not so simple as it may be made to appear. For in emotional stress there is not only a domination of the lower centers of the spinal cord over the higher centers of the brain, there is also the setting free in the blood of various complex chemical entities from the ductless glands. Whether the glands act



first under emotional stress, excrete and so stimulate the lower centers that they overpower the higher, or whether the superdomination of the lower centers sets free the secretion of the ductless glands, which cause certain physical symptoms, I am free to say I do not know.

But we *do* know—and we *can* say—that in emotional stress, whatever the immediate mechanism may be, the result is that the lower, more mechanical, animal centers in the medulla and spinal cord dominate and overpower the higher centers of the brain.

I fear that I am boresome in this attempt to state in simple terms how excessive emotion works. So much for theory. Now let us turn to simple experiment. For whenever one has propounded a theory, the proper scientific method is to test that theory by experiment.

I am not going to explain any complex psychological tests. I would only like to suggest some simple matters that you yourselves may try on your friends and neighbors. The first necessity is to get the person on whom you are to experiment in a condition of emotional stress. Of course, there come occasionally, as at fires or earthquakes and such unusual happenings, chances to see and to test people when in the grip of some strong emotion. But we cannot make fires and earthquakes to order. And one of the necessities of an adequate scientific experiment is that it shall be easily repeated, so that its results can be easily controlled.

The best place to study emotions is in the theaters. I might even suggest the movies, and indeed I have experimented at the movies with satisfactory results. But the darkness is always a difficulty, and I prefer the ordinary theater. Take a friend—or preferably a young person—an impressionable girl or youth of twenty—to some intensely interesting and exciting play. You must first go to the play yourself alone, so that you know all the situations, and so that your own emotions will not interfere with the clearness of your own mental reactions. Having seen the play once, take your “experiment” to see it, and watch her. From having seen the play once yourself, you will know what the most exciting parts are. When one of these situations is in progress, lean over to your companion and say distinctly in her ear: “A man behind you has just dropped dead,” “I am feeling very, very ill,” or even, “Your hair is falling down.” She will not even hear you. She may turn her head and look at you blankly for a second, but an instant afterwards her face will turn to the stage again. Under the strain of her emotions, she is no longer

able to make use of her thinking centers. Her hearing functions properly; the sound waves of speech reach her ear, but what you say means nothing; the line of thought that it should start does not start—the higher centers are not working. You can test her sense of touch in the same way. I will wager that you can prick her hand with a pin and she will not notice it. Or, if she is given to the bad habit of eating sweets during the performance, hand her during the excitement of the play some chocolate-coated lumps of cotton, and she will chew away on them until her emotional stress lessens and she turns to you in a rage. Her sense of taste is intact, but the stimulation of her taste centers, which should tell her thinking centers that something is wrong with what she is eating, does not reach her brain at all. In a word, her intense emotion has cut her off, for the moment, from the stimuli of the outside world. She is like poor Frank Kulak, when he was beaten up by the policemen after the murder of their fellow—she is not physically conscious of what is happening to her.

If now, in her emotional state, some impetus rises in her to do some act that she would ordinarily shrink from, she will surely follow that impetus as it rises from the lower centers of her being, follow it mechanically, blindly, without consciousness of what she is doing.

Perhaps it would be more accurate to say that in such emotional conditions it is not so much that the lower centers dominate the higher, as that the higher centers are suspended in their functioning and allow the lower centers to act alone in absolute control. But either way, the result is the same. It is the lower centers that enter into control of the whole human personality.

Naturally, there are all sorts of intermediary conditions between the absolute automatism, when the lower centers dominate, and conditions in which the higher ones still retain some power to direct action. Psychiatrists are, for example, familiar with what is called a narrowing of the field of consciousness. This is usually the result of some psychic shock, or intense emotional crisis. I remember a case that I saw while studying at the University of Innsbruck—a peasant girl who had been engaged to a highly desirable young farmer. As the custom in Tyrol often is, these two people could not get married until the man had finished his military service. But in such cases, where final marriage is assured (and it almost always is finally assured) the couple regard themselves as practically man and wife, and if the woman bears her man a child or two, this is held to be no disgrace, for, as soon as the man has completed his military service, he returns to his betrothed, marries her, and the children are legitimized. In

this case of which I speak, the girl bore the man a child a few months after he had gone to Vienna to enter the army. But the child was scarcely born when a telegram arrived announcing the young man's sudden death in an accident, due to the bursting of a gun. The girl saw herself at once disgraced and her child illegitimate. She was brought to the clinic in a mildly excited or hypomanic condition, in which she paid no attention to anything or anyone, would not eat, and did not sleep for days, but constantly, without ceasing, she repeated a single sentence: "Oh, my poor child, my poor child!" For hour after hour, for day in and night out, her voice went on and on, repeating the same form of words. Under the mental shock her field of consciousness had narrowed, until it could only contain the idea of her child's disgrace and her expression of it. All kinds of sedatives were tried, to no purpose. It was only after the third day, when the woman was near absolute collapse, and when the staff had nearly collapsed also under the endless sound of her voice repeating endlessly the same words, it was only after ether and chloroform had been used to produce a complete anæsthesia of an hour or more, that the contracted field of her consciousness recovered from its mental cramp and gradually enlarged until she became normal again. It was like a muscular contraction of the pupil of the eye, yielding only to a general anesthetic that finally relaxes the cramp of the tiny pupillary muscle by relaxing the entire nervous mechanism of the body. When she recovered, the woman had a complete amnesia for all the happenings of her three days' attack.

I repeat, there are cases that run all the way from a complete automatic control of the lower centers, with complete exclusion of the higher thinking activities, all the way through more or less complete automatic states, gradually down to conditions, in which the higher centers maintain more or less control, and in which the loss of memory is more or less marked. In a word, under great emotional stress, the field of consciousness suffers various degrees of narrowing—from minor degrees of this narrowing down to a complete exclusion of conscious thinking.

There have been many schemes made, or charts arranged, in which the different emotions are described and catalogued. But curiously enough, it is very difficult to obtain any single emotion in what the bacteriologists would call a "pure culture"; that is, without the admixture of some other emotion. And after all has been said, we may reduce the emotional life to the two elements of fear and love, repulsion and attraction, happiness and sorrow. Yet even here one finds

that the extremes meet; that extreme emotional desire and extreme fear are almost interchangeable and very much alike. The Freudians will tell you that, in the unconscious life, fear and desire are interchangeable entities.

Thus far I have spoken more of emotional states than of illegal acts. As a matter of fact, when a person automatically, in a state of intense emotion, spills his emotional crisis over into action, it is only by chance or attendant circumstances that that action *happens* to offend against existing law. The person in such a state is like an automobile running at full speed with its chauffeur in a dead faint at the steering wheel. It may happen that the car will run straight, it may happen to find itself on a straight road, on a road that is empty of other vehicles. If it does so happily find itself, then it runs on without anyone to direct it, but without doing any harm until the chauffeur comes out of his faint and grasps the wheel again. But if the road is uneven, if it turns and twists, if other cars are on it, if any little swaying of the car sends it out of its straight course sideways—then all sorts of smashups happen. The car runs over pedestrians, smashes into other cars, and finally ends by crashing through the plate-glass window of some store, mortally injuring the chauffeur, who is just regaining consciousness once more. Just so, a person under great emotional stress in one set of surrounding circumstances may commit no illegal act at all; in other circumstances he may end by committing murder.

Yet we are so unreasonable as to absolve him from any responsibility for his mechanical actions if they do no harm, while we imprison and sentence him if these same blind actions happen to end in an illegal act.

This illogical manner of envisaging such actions is so deep-seated, especially in the minds of learned lawyers, that they immediately look askance whenever a case of this kind is brought before them, and they are told in plain language that "the prisoner actually did not know what he was doing, has no remembrance of what he did, and should not be held responsible."

Here we touch on that most difficult of all subjects in the whole domain of modern criminology: the doctrine of criminal responsibility. This is a chapter in our discipline that must be revised, rethought and restated from beginning to end. The legal criteria of responsibility, as they now exist, are absolutely untenable. I do not know the exact phraseology of them in other states, but in Maryland, according to the decision of the Supreme Court in the Spencer case (Md. 69) a man is held responsible so long as it can be said "that he knows the

difference between right and wrong, and can recognize the nature and consequences of his actions." Many an acutely insane person has a clear sense of right and wrong, and knows the consequence of his acts. But in such a case as that of Frank Kulak, in which you have a man who has been seen to act normally up to a certain point, you will try in vain to convince a lawyer that Kulak did not have proper mental control of his actions, and that the sudden act of murder, coming abruptly in the train of a line of perfectly normal actions, was not a sudden brutal crime, but only the logical end-action of a mind that was running away, and that had, before the murderous shot was fired, escaped from the control of its owner.

Lawyers will tell you that such theories as these of ours about emotional states will open the door to all sorts of crimes. But that is not so. In the first place, as I have already said, the entire chapter on "Responsibility" must be rewritten, and all the old legal shibboleths must be thrown overboard. For years I have scanned the announcement lists of legal and medical publishers, hoping that I might discover the title of some new book which shall deal adequately with this fundamental subject. As yet I have looked in vain. In the second place, we, as physicians, criminologists, psychiatrists must do more to make our lights shine before men, but especially before lawyers. In the many trials at which I have given testimony as to the mental and physical conditions of illegal actions I have always had to bear one constantly reiterated reproach from my legal friends; it is always couched in the same words. They say: "But Doctor, Doctor, you are not holding your testimony within the law as already laid down; *you are trying to make new law*. And, anyway"—as they always end—"the medical idea of insanity or of irresponsibility and the legal idea of it are two utterly different things. In the hospital I will accept your ideas; but here in court, you must accept mine."

My only comfort at such times is the realization that because a certain form of thought happens to be "the law"—laid down by men long since dead and untouched by modern science—it need not happen to be right. Indeed, I know that I am right, and that the law is wrong. But because I and you know this, we should have the courage of our opinions. And when on the witness stand we are asked, "Doctor, at the time of the murder did this man know the difference between right and wrong? Answer yes or no. If you answer 'Yes,' he is responsible and should be hung,"—I say, when this question, or one like it, is put to us, we should reply, "I *cannot* answer either yes or no, because I was not there at the time of the murder, and so I

do not know whether the man knew right from wrong. No one knows except Almighty God—perhaps. But even if I did know, I would not answer your question, because it is no adequate criterion as to a man's responsibility."

Let us, I repeat, be more courageous. Let us say openly we *are* trying to make new law. If the lawyers and judges will not make it of their own initiative, we must bother them courteously until they do. And let us try to educate our legal friends and colleagues. It is not impossible. In Baltimore last year, at a meeting of a lawyers' club that counted among its members the most distinguished judges and jurists of the city, Dr. Meyer of the Phipps Clinic and myself were asked to dinner, and, after dinner, to speak on the question of "Insanity." By that our kind hosts meant that they wanted to hear about our ideas about legal responsibility. Dr. Meyer gave them a brilliant exposition of his views, using, to point his moral, the circumstances of a recent famous case in Maryland, in which Dr. Ishida, a famous Japanese alienist, who was doing research work in this country, developed very marked paranoid trends and shot and killed one of his American colleagues. In spite of testimony as to his mentally disturbed condition, Ishida was found guilty of murder in the first degree and sentenced to imprisonment for life. At this lawyers' dinner of which I have spoken, after I had followed Dr. Meyer with my minor efforts in the same line, the assembled jurists were so interested that it was decided to begin this autumn, at the Phipps Clinic, a series of clinical demonstrations of different psychopathic mental states, primarily for members of the bar. Dr. Meyer and myself have planned a series of these demonstrations, and I promised myself good, if not very great, results. I also offered to the faculty of the Maryland Law School to give five lectures, if they could spare me the time in their curriculum—lectures on "The Unsound Mind and the Law," to be given in connection with the regular lectures on criminal law. Personally, I have more hope of getting permanent results from the coming generation. It is much harder to change the ingrained legal habits of thinking that have endured for years. I mention this in order that you may understand what *can* be done.

First, then, let us have a complete restudying and restating of the whole doctrine of legal responsibility. Secondly, let us do all that we can to make the lawyers get our point of view; let us be zealous in building a bridge between the outworn shibboleths of the courtroom and modern psychopathology. And, thirdly, in connection with all that I have hitherto said on the subject of emotional states and illegal

acts, let us remember one fundamental thing. And that is briefly as follows:

I have already told you how I came to notice the symptom of amnesia in murders and delinquencies committed under emotional stress; how gradually my suspicions that the man was malingering gave place to a better understanding, as I added one case to another and found in such illegal acts, done under emotional stress, certain unvarying symptoms. Then as I collated and studied these cases, as I completed the family and case histories of the men and women concerned in them, I found that in not one of my cases could I say that at the time of the commission of the illegal act the delinquents in question were wholly sound, were completely normal both in body and mind. I mean that whenever I found a case of illegal acts committed under emotional stress, I found something wrong with the person himself—an impaired mental machine or an abnormal physical condition. In one case the murderer had a long history of epileptic seizures; in another, the man's mind, that of Frank Kulak, was subnormal, on the border line of actual mental deficiency; in others, there were other psychopathological stigmata. In another case I found that the woman had been suffering from malnutrition—had been almost starving, in fact. In another, there was a history of alcoholic abuse. But I will not add to the list of psychopathological and other symptoms. In every case some were there, easily recognizable.

This does not mean that a perfectly normal mind and body may not suffer such emotional stress as to paralyze the higher centers and make it irresponsible for its automatic actions. In the war we have seen perfectly healthy men break down in this way under great physical strain or emotional burden. But I do say that, as far as my own experience goes, I have never found a case of illegal acts, committed as a result of this same emotional overburdening, without being able to find, at the same time, stigmata and symptoms of subnormality. My experience bears out the remarkable results of Dr. Glueck's researches, namely, that it is the subnormal type that is most frequently found in delinquents. At least I have found it most frequently represented among my collection of cases of crimes committed under the stress of outwearing emotion.

I do mean, therefore, that as a rule whenever you find a case of this kind—like the case of Frank Kulak—you will also find an individual who is not mentally or physically a normal individual. I know that the word "abnormal" is not a strictly scientific one, for there is no such thing as a perfectly normal mind or body. But nevertheless

it expresses the main idea that we are trying to get at, namely, that the delinquent who has committed a crime under emotional duress is not on a level with the general run of other human beings.

If you can make the lawyers see this—if you can show them that the delinquent in question has lost control of his actions under emotional stress, because the thinking machine which he has at his disposal is not a normal one—then they may be willing to accept something of what you say. They will probably put the cart before the horse and admit that he was not responsible because he was “feeble-minded” or subnormal mentally, instead of admitting that he was, at the time of the criminal act, irresponsible because his emotional upheaval had so narrowed his consciousness as to completely exclude any possibility of restraint on his part. But that does not matter so greatly. If they admit this much, in time they may accept our entire viewpoint. And we have at least shown them that the man should not be judged as a strictly responsible person according to the strict letter of the law.

So, gradually, they will accustom themselves to the doctrine of “restricted responsibility,” which is the only adequate conception. At present a man is either “crazy” and irresponsible—that is, “not guilty”—or else he is responsible for all and each of his actions. Such a doctrine has no place for acts committed under emotional stress, which restricts the responsibility according to the greater or less narrowing of the thinking and restraining consciousness. But the idea of a “restricted responsibility” makes adequate provision for actions of this type.

Let me conclude with another case—not a murder this time, but with a type of delinquency which is committed under emotional conditions much oftener than many people realize. I mean, shoplifting. The owners of shops, large and small, deck their windows and pay large sums to window decorators in order to arouse in the passers-by emotions of so strong a power that the man or woman will be tempted into the shop; at least to look, if not to buy. The appeal of every show window—and how insidious many of them are—is an emotional appeal. And women become shoplifters more frequently than men, not because of the idiotic idea that women have no moral sense of property, but because women shop more, look into window displays more, have more time to do it, and because, with their more delicate emotional reactions, they are more open than men to the awakening of those emotional desires to which the window-dresser and his employer openly pander. Oftentimes, when I see a particularly attractive dis-



play of women's clothing, or of silks and delicate fabrics, I say to myself: "That man deserves to have shoplifters in his store." His display is aimed at passers-by, who do not intend to stop and buy; he wants to attract their attention, to lure them into the shop. But he must know that many of the people whom he lures have not the money to pay for those things, the desire for which his own display has aroused in them. So, why shouldn't there be shoplifters in his shop? I only wonder there are not more of them. Probably this is because women are much more strong-minded than we give them credit for.

For this and other reasons, shoplifting is very frequently committed under emotional stress of one kind or another. Let me give you, in conclusion, the following case. But let me say at the same time that I have no sympathy for the organized shoplifting of professional thieves—a type of offense entirely different from the case that I am about to describe.

About a year ago, in Baltimore, Mrs. S., a woman evidently of education and good social standing, was brought before a magistrate on a charge of shoplifting. She had been noticed in a department store by one of the detectives; her behavior had seemed somewhat peculiar; she had been hovering around the silk remnant counter, and finally had been seen to slip into her bag a number of variously colored silk remnants. There had been a good deal of undetected shoplifting in this particular shop, and the owners were determined to make an example of every woman caught in the act of stealing. So Mrs. S. was arrested, put through the usual examination, searched, and taken to the station house. She seemed nearly fifty years old, possibly older; she seemed also harassed and confused, but made no effort to resist or to deny her theft. The value of the silk remnants that she had stolen was more than five dollars, which placed her theft in the class of grand larceny and forced the hurried magistrate to commit her for trial in the higher criminal court. So she was sent to prison, and inasmuch as she seemed too ashamed, or else too confused, to give the names of her people, or even her address, she was taken to the city jail, where she remained, herded with drunkards and prostitutes, for three days. At last an anxious and terrified young man, her older son, appeared and took her out on bail. But her experience with the rather brutal detectives of the department store, and her sojourn in the station house cell, her ordeal before the magistrate, and, above all, her three days in jail, had been so great a strain upon her already confused mind that she developed a definite melancholia, which

necessitated treatment at a psychopathic hospital for over a year. Finally she was discharged from the hospital as recovered, but, in reality, forever more or less broken in health.

An examination of this woman's case—an examination unhappily that came too late—disclosed the following facts:

Mrs. S. was a widow; she had two sons, one of whom was married and with his own family to support, the other had been drafted and was fighting in France. She herself, left all alone, was boarding in a single little room in a house filled with busy people, who gave little or no thought to her or to her condition. She was greatly undernourished, for she had almost unbelievably little money; but she had her pride and concealed her financial condition. For some reason or other, either because of her pride, or because of her younger son's stupidity, she had never applied to the Red Cross for aid; had never allowed her soldier son to deflect any of his pay to herself. Over this son, exposed to constant danger in France, she brooded and worried continually. Because she was undernourished and worried, she slept but little. Her thoughts were always with her son in France. And she was passing through that perilous age which lies between a woman's forty-fifth and fifty-fifth year. Her one absorbing joy, her one great source of pride, was the little service flag, with its one star, which hung in her window.

One morning, on a cold, rainy day in spring, she read in the paper, in the casualty list, the name of her son. He was classed among the missing. To her this meant that he was dead. And from this moment on her mind began to cloud; her field of consciousness began to narrow. There was one dominant thought left in it, and only one. She felt that she must hasten to change the little flag in her window, as a sign of her son's heroic death at the front. And it must be a better, finer flag, worthy of her boy. But for this new flag, for the new star, she needed some white and yellow silk. She hurried downtown, forgetting even to eat her meager breakfast. In her hand she clasped her worn leather purse, that contained only half a dollar—all the money she then possessed. Down town the streets were crowded; the pavements were slippery. At a crowded crossing she was almost run down by an automobile, and when she finally reached the curb her legs trembled so that she missed her footing and fell. People helped her to her feet, and she walked on, apparently with little injury. But this physical shock had completed the confusion of her mind. In her fall she had dropped her purse, but she did not know of her loss. From this point on she was like a rudderless

ship sailing before the wind, or, to use our former simile, like an automobile with its engine running at high speed and its chauffeur in a dead faint at the steering wheel. She remembers, very hazily, being in a department store. Beyond this her conscious mind registered nothing until she felt her arm seized roughly by a strange man, who lead her away among the crowds in the shop. She had a vague recollection of being badgered and tormented and questioned by several discourteous men and women; but she could not remember her name or even her address. She was stripped and searched from head to foot. Her hours in the station house cell, her hearing before the magistrate, and her three days in jail were all to her like a hazy dream. Here and there a promontory of reality would seem to emerge above the ever engulfing waves of the strange, unreal existence in which she seemed to be struggling. An hour or two before her son found her and bailed her out she had fought her way back to reality, to more or less complete consciousness—to herself. And when she did come to herself, she found herself branded as a shoplifter. After some weeks of brooding and self-reproach, she drifted into the deep attack of melancholia or depression which necessitated a year's treatment in a psychiatric hospital.

Fortunately for Mrs. S., she was never subjected to the ordeal of a court trial. I examined her, worked out her case, and presented a detailed report upon it to the state's attorney's office. The case against her was settled. But how great suffering—how deep a mental hurt—could have been spared this unfortunate woman had there been some one, some proper medical officer attached to the police court, who could have examined her at once, straightened out the right and wrong of the case, and sent the sick woman home to her older son before any lasting damage had been done.

I have gathered together at least ten or more similar cases of shoplifting. They all show, broadly speaking, the same major symptoms. And I have described this one at length because it is so excellent an example of how physical and mental traumata or shock can combine to produce an emotional stress under which consciousness is narrowed down to a pin-point and the person becomes an irresponsible machine. Worry over her son, the shock of the news of his death, on the one side; on the other, the physical traumata of undernourishment and of a sudden fall on the street—these two classes of mental and bodily happenings explain this woman's condition: the emotional state that resulted in the illegal act.

I must thank you for your patience in listening to me. I am con-

scious, fully conscious that there are very many gaps in my attempt to treat this difficult subject. In the first place, my material is not large enough; I know that well. And I would therefore urge you, in your own delinquent practice, and in your work in prisons and reformatories, to collect any cases that come to your knowledge, such as those that I have tried to describe. Get careful family histories, make up detailed records of the delinquent's life, and pay especial attention to all the most petty circumstances that have surrounded the criminal act itself. Then, in time, we shall have enough properly classified material to make really scientific and tenable deductions. What I have tried to offer you today is only an outline—a very faulty one. And no one is more sensible of its shortcomings than myself.

References and Authorities:

- Psychische Verursachung Seelischen Stoerrungen, by Dr. Birmbaum, Wiesbaden, Germany, 1918; published by Bergman.  
Krieg und Geistesstoreung, by Prof. Erwin Stransky, Vienna, 1919; published at Wiesbaden, by Bergman.  
Psychological Principles, by Prof. James Ward, Professor of Mental Philosophy, Cambridge University; University Press, Cambridge, 1919.  
Organic Changes and Feeling, by J. F. Shepard, American Journal of Psychology, 1906. Vol. xvii.  
Psychologie, by Ebbinghaus; published, 1911; page 564 ff.  
Origin and Nature of the Emotions. George W. Crile. Phila. Wm. Saunders. 1915.